

ESTTA Tracking number: **ESTTA290225**

Filing date: **06/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176791
Party	Defendant MATTEL, INC.
Correspondence Address	Lawrence Y. Iser, Esq. Kinsella Weitzman Iser Kump & Aldisert LLP 808 Wilshire Blvd., Suite 300 Santa Monica, CA 90401 UNITED STATES CFitzgerald@kwikalaw.com
Submission	Defendant's Notice of Reliance
Filer's Name	Chad R. Fitzgerald
Filer's e-mail	cfitzgerald@kwikalaw.com
Signature	/crf/
Date	06/17/2009
Attachments	Notice of Reliance re Discovery Depositions Vol. 1.pdf (97 pages)(5351668 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

NOTICE OF RELIANCE RE: DISCOVERY DEPOSITIONS

Vol. 1 of 3

Pursuant to 37 C.F.R. § 2.120(j), Applicant Mattel, Inc. hereby makes of record and notifies Applicant of its reliance on:

1. The transcript of the discovery deposition of Jeff Moskow, as a Rule 30(b)(6) witness appearing for Opposer UMG Recordings, Inc., taken on September 8, 2008, and Exhibits 100-102 thereto. True and correct copies of the Moskow transcript and Exhibits 100-102 are attached hereto as **Exhibit A**.

2. The transcript of the discovery deposition of William Waddell, as a Rule 30(b)(6) witness appearing for Opposer UMG Recordings, Inc., taken on November 5, 2008, and Exhibits 103-111 thereto. True and correct copies of the Waddell transcript and Exhibits 103-111 are attached hereto as **Exhibit B**.

DATED: June 16, 2009

Respectfully submitted,

KINSELLA WEITZMAN ISEK KUMP &
ALDISERT LLP

By: 

Lawrence Y. Iser
Attorneys for Applicant Mattel, Inc.

Exhibit A

JEFF MOSKOW

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3
4 In the matter of Application Serial No. 78/751,105
5 Published for Opposition in the Official Gazette on
6 December 12, 2006

7 -----
8 UMG RECORDINGS, INC., Opposition No.:

9 Opposer 91176791

10 v.

11 MATTEL, INC.,

12 Applicant
13 -----
14

15 DEPOSITION OF:

16 UMG RECORDINGS, INC., 30(b)(6)

17 JEFF MOSKOW

18 MONDAY, SEPTEMBER 8, 2008

19 10:04 A.M.
20
21
22

23 REPORTED BY:

24 SUSAN NELSON

25 C.S.R. No. 3202

MERRILL LEGAL SOLUTIONS

1 Deposition of UMG RECORDINGS, INC., 30(b)(6), JEFF
2 MOSKOW, the witness, taken on behalf of the
3 Applicant, commencing at 10:04 A.M., on MONDAY,
4 SEPTEMBER 8, 2008, at 808 Wilshire Boulevard, Santa
5 Monica, California, before SUSAN NELSON, C.S.R. No.
6 3202.

7 APPEARANCES OF COUNSEL

8 FOR OPPOSER:

9 MITCHELL, SILBERBERG & KNUPP LLP
10 BY: ALEXA L. LEWIS, ESQ.
11 11377 West Olympic Boulevard
12 Los Angeles, California 90064-1683
13 (310) 312-2000
14

15 FOR APPLICANT:

16 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
17 BY: LAWRENCE Y. ISER, ESQ.
18 CHAD R. FITZGERALD, ESQ.
19 808 Wilshire Boulevard
20 3rd Floor
21 Santa Monica, California 90401
22 (310) 566-9800
23

24 ALSO APPEARING:

25 JOAN CHO, UNIVERSAL MUSIC GROUP

1	I N D E X		
2	WITNESS	EXAMINATION	PAGE
3	JEFF MOSKOW		
4		By Mr. Iser	4

5

6

7 QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER

8		PAGE	LINE
9		22	24
10		68	6

11

12 E X H I B I T S

13	NO.	PAGE	DESCRIPTION
14	Exhibit 100	23	Amended Notice of Deposition of
15			Opposer UMG Recordings, Inc.
16	Exhibit 101	46	Intellectual Property License
17			Agreement
18			(UMG00141-00166)
19	Exhibit 102	48	Photos
20			(UMG 00167-00172)

21

22

23

24

25

1 SANTA MONICA, CALIFORNIA;
2 MONDAY, SEPTEMBER 8, 2008;
3 10:04 A.M.

4
5 JEFF MOSKOW,
6 having been first duly sworn, was
7 examined and testified as follows:

8
9 EXAMINATION

10 BY MR. ISER:

11 Q. Would you state your full name for the
12 record.

13 A. Jeffrey, J-e-f-f-r-e-y, Moskow, M-o-s-k-o-w.

14 Q. And would you tell me your date of birth,
15 please.

16 A. Sure. September 29th, 1962.

17 Q. And by whom are you employed?

18 A. Universal Music Group.

19 Q. And how long have you been employed by
20 Universal Music Group?

21 A. Seventeen years. I was with PolyGram prior
22 to the merger.

23 Q. So the 17 years includes your time at
24 PolyGram?

25 A. Correct.

1 Q. And when you say "prior to the merger," what
2 merger are you speaking of?

3 A. The -- that Universal either acquired or
4 merged with PolyGram in -- I don't know the exact
5 year, but.

6 Q. And what is your position with Universal
7 Music Group today?

8 A. I'm vice president of marketing for a
9 company called Universal Music Enterprises.

10 Q. And what is the business of Universal Music
11 Enterprises?

12 A. Catalog sales and marketing.

13 Q. When you refer to catalog sales, what do you
14 mean?

15 A. Product that is not necessarily new released
16 product, usually older than 18 months, including the
17 classic labels that are owned by the music group.

18 Q. One of those labels is Motown?

19 A. Correct.

20 Q. Is it correct to refer to Motown, then, as a
21 classic label?

22 A. It's probably the most classic label.

23 Q. Does Motown have any current artist
24 releasing records through Motown?

25 A. Yes.

1 Q. And can you tell me who they are.

2 A. There is some of them would be Akon and
3 Lil Wayne. They're part of a group called Universal
4 Motown Republic Group. Some artists release records
5 through Universal Motown. Some through Universal
6 Republic.

7 Q. How do you spell Akon?

8 A. A-k-o-n, and Lil Wayne is L-i-l, W-a-y-n-e.

9 Q. Do you say W-a-y-n-e?

10 A. Yes.

11 Q. So when Akon has a new record, it's on which
12 label?

13 A. There could be some sub labels, in other
14 words, it could be on a label like SRC or something
15 like that, but it -- the artists at the Universal
16 Motown Republic Group are broken up into two
17 directions, and sometimes it could be any number of
18 different pieces but they usually come out through
19 one of those two segments.

20 Q. With respect to Akon, which segment --

21 A. I believe it's Universal Motown. And I
22 believe there could be a sub label like SRC, but I'm
23 not 100 percent positive. That's a front line area
24 that I don't deal with. I deal with the catalog.

25 Q. And what about Lil Wayne, which segment does

1 he come out on?

2 A. I believe also Universal Motown, but there
3 is a sub label in that case, which is Cash Money.

4 Q. And what is a sub label?

5 A. It's usually a label that's either been
6 acquired or -- either for ownership or distribution.

7 Q. All right. So would it be correct to say
8 that Lil Wayne was on the label Cash Money before
9 that label was acquired by Universal Music Group?

10 A. I'm not versed enough to answer that.

11 Q. Okay. Now, you mentioned the sub label for
12 Akon. Could you say it again, please?

13 A. I believe it's SRC, but, again, it's not my
14 area of expertise.

15 Q. Do you know whether SRC was an existing
16 label that was acquired by Universal?

17 A. No, I don't.

18 Q. The segment Universal Motown, is it correct
19 that when Akon's records come out on Universal
20 Motown, the mark that is used is Universal Motown as
21 compared to just Motown?

22 A. I honestly don't know.

23 Q. Is the same true, you don't know with
24 respect to Lil Wayne?

25 A. I don't know.

1 Q. Other than Akon and Lil Wayne, are there any
2 other artists --

3 A. There are many. I don't know what -- who
4 they are, but there are many.

5 Q. I'm going to stop for a moment and -- since
6 we're cutting each other off, I think we need to set
7 up some ground rules for us. Okay?

8 So have you ever had your deposition taken
9 before?

10 A. No. This is my first time and I'm excited.

11 Q. I can tell that you're excited and eager,
12 which is a fantastic thing, which means that we'll
13 have some fun here today. Sometimes people are
14 reluctant and it's not nearly as much fun, but you're
15 into it. That's great. Let me just go over the
16 ground rules for you.

17 The lady sitting to your left is a court
18 reporter. She's going to do her best to take down
19 everything that transpires here today, all of my
20 questions and all of your answers and any objections
21 that counsel may have to the proceedings, and the
22 possibility exists that we may all start talking at
23 once, and we should try to avoid that because that
24 would really irritate our court reporter.

25 So if you'll give me a chance to finish my

1 question, I'll give you a chance to finish your
2 answer. We'll both give counsel enough time to say
3 anything she wants to say.

4 Fair enough?

5 A. Fair enough.

6 Q. At the conclusion of the proceedings today,
7 the court reporter will prepare a booklet that will
8 contain all of the questions and answers and
9 objections and everything that takes place here
10 today. That booklet's called a deposition. And that
11 booklet will be presented to you for you to read and
12 review and make any changes that you want to make to
13 your testimony and then to sign that deposition
14 booklet as being true under penalty of perjury.

15 I want to warn you, however, that if you
16 make any changes to your testimony, that we'll be
17 able to comment on the fact that you changed your
18 testimony and that your credibility as a witness
19 should be adversely affected by the fact that you
20 changed your testimony.

21 So for that reason, it's important that you
22 listen to my questions fully and that you take a
23 moment and think about your answers and get your
24 answers correct the way you want them to be today.

25 Do you understand that?

1 A. Yes.

2 Q. Okay. You've just been given an oath by the
3 court reporter. And that's an oath to tell the truth
4 under penalty of perjury. That's the same oath that
5 you'd be given if you were testifying in a court of
6 law. And it carries with it the same formality and
7 solemnity as if you were testifying in a court of
8 law. So I just want you to understand that if you
9 don't tell the truth today during your deposition,
10 your failure to tell the truth would constitute
11 perjury, which is a felony.

12 Do you understand that?

13 A. Absolutely.

14 Q. Okay. And finally, make sure that you
15 understand all my questions today. Don't guess or
16 speculate. You've been designated as a witness by
17 your employer to testify as to certain matters, and
18 if you don't know the answer to something, please
19 just say you don't know. And if you do know the
20 answer to something, however, I'm entitled to your
21 full and complete response.

22 Do you understand that?

23 A. Yes.

24 Q. Do you have any questions of me?

25 A. No.

1 Q. Okay. Very good.

2 So I was going to -- where we left off was,
3 in addition to Akon and Lil Wayne, are there other
4 current artists whose records are being released on
5 Motown today?

6 A. Yes.

7 Q. And can you give me a list of them?

8 A. I don't know.

9 Q. Do you know any of them?

10 A. There are a lot of artists that release
11 albums through the Universal Motown Republic Group.
12 Since I don't deal with the front line releases on a
13 daily basis, I would be guessing as to which ones
14 would fall under which side, so I really would prefer
15 not to guess.

16 Q. I don't want you to guess, but if you have
17 any information as you sit here as to any artists
18 other than Akon and Lil Wayne that are releasing
19 records on the Universal Motown Republic Group of
20 labels, can you tell me them, please?

21 A. If I remember them, I would be telling you,
22 but I don't recall any more. There are others.

23 Q. But you can't recall the name of a single
24 one as you sit here today?

25 A. Other than Lil Wayne and Motown, that --

1 Lil Wayne and Akon.

2 Q. Akon. Okay.

3 A. That's correct.

4 Q. Okay. Would you tell me, sir, your
5 educational background, sir, beginning after high
6 school.

7 A. Yes. I have a bachelor's degree in
8 marketing.

9 Q. From where?

10 A. Philadelphia University.

11 Q. And when did you get that degree?

12 A. May 1985.

13 Q. Any other education beyond a bachelor's
14 degree?

15 A. No.

16 Q. I'd like you to trace your employment
17 history for me, beginning with your graduation from
18 Philadelphia.

19 A. I was in -- worked in a record store called
20 Sound Odyssey as a buyer and in store management.
21 Then --

22 Q. During what period of time?

23 A. Pretty close to graduation all the way
24 through about 1987.

25 Q. Okay. Then what did you do?

1 A. Then for a very short period of time, for
2 about three or four months, I worked for a company
3 call the Donnelly Directory, which is Yellow Page
4 advertising.

5 Q. From what period of time?

6 A. Can't recall specifically but it was in
7 1987, approximately, for a couple of months. Three
8 months, four months.

9 Q. What did you do for the Donnelly Directory?

10 A. I was in sales.

11 Q. And then what did you do?

12 A. I joined a company called Schwartz Brothers,
13 which is an independent music distributor and one
14 stop as a sales representative. And for them, in
15 addition to being a sales representative, I was a
16 sales manager and a branch manager. And I left their
17 employment in April of 19- -- excuse me. May I back
18 up -- March of 1991.

19 Q. And you began there in 1987?

20 A. That's correct.

21 Q. And could you tell us what an independent
22 distributor is?

23 A. Certainly. It's a distributor that sells
24 labels, products -- labels from products -- excuse
25 me -- product from labels that are not distributed by

1 major record labels.

2 Q. And would you define "one stop," please.

3 A. One stop is a distributor that sells music
4 product and other accessory product to retail stores
5 that are too small to buy direct from the major
6 labels.

7 Q. And as a sales representative, what was your
8 job duty?

9 A. To sell music product to independent
10 retailers.

11 Q. You would actually go into the stores?

12 A. In some cases. It was phone or in person.

13 Q. And when you say branch manager, does that
14 mean that Schwartz Brothers had offices around the
15 country?

16 A. Yes.

17 Q. And which branch did you manage?

18 A. The Washington, D.C. branch.

19 Q. Is Schwartz Brothers still in business?

20 A. No, they are not.

21 Q. When did they go out of business?

22 A. I don't know exactly but I would -- it was
23 after I departed, so it was sometime after March of
24 1991.

25 Q. It's probably because you departed.

1 Correct?

2 A. No.

3 Little joke. Correct?

4 Q. Just a little joke. Just a little joke, you
5 know.

6 A. I'm with ya.

7 Q. It's early in the morning.

8 All right. So after Schwartz Brothers, what
9 did you do?

10 A. I joined PolyGram as sales manager in the
11 Chicago region in April of 1991. April 22nd, 1991.

12 Q. And you stayed employed continuously with
13 PolyGram until it merged into Universal Music Group?

14 A. Yes, in different roles, but yes.

15 Q. Your first role was sales manager Chicago
16 region?

17 A. Correct.

18 Q. And how long did you have that --

19 A. Seven months.

20 Q. You have to let me get those questions out.
21 Otherwise, you know, the court reporter might throw
22 something at you.

23 A. Sure. Just nudge me.

24 Q. After sales manager Chicago region, what was
25 your next position within PolyGram?

1 A. Branch manager of the D.C. branch from -- I
2 believe it was December or January, I'm not sure
3 exactly, of 1992, I guess, January of '92, through
4 September of '96.

5 Q. And just for the record, what is the
6 business of PolyGram?

7 A. A -- a record company. And I worked in the
8 distribution side.

9 Q. And where were PolyGram's headquarters in
10 1991?

11 A. New York City.

12 Q. And after September 1996, what was your next
13 position?

14 A. I was Eastern regional director of sales for
15 PolyGram Special Markets.

16 Q. And what was PolyGram Special Markets?

17 A. A company that sold budget and custom
18 product to the retail and one stop trade.

19 Q. Can you give me an example of what you mean
20 by budget and custom product?

21 A. Certainly. It's product that's priced at a
22 6.98 list or lower that is a very low-priced offer to
23 the consumer.

24 Q. How long were you Eastern regional director
25 for PolyGram?

1 A. I don't know the exact period of time. I
2 would say a couple of years, probably two years.

3 Q. So now we're talking about late 1998 or so?

4 A. Hm-hm, yes.

5 Q. And what was your next position?

6 A. I was vice president of A&R and marketing
7 for a label known as UTV Records. This was after the
8 PolyGram-Universal merger.

9 Q. When was the UMG-PolyGram merger?

10 A. I really can't recall. It's all sort of a
11 blur.

12 Q. Okay. And when you say "A&R," what are you
13 referring to?

14 A. It's artists and repertoire. In this
15 capacity, it was identifying the projects that we
16 were going to release on the label and determining
17 what repertoire would be part of those projects.

18 Q. And what was the business of UTV Records?

19 A. It was a label, primarily a compilation
20 label that would release either greatest hits by
21 certain artists or compilations by genre.

22 Q. Now, as of the time you were the
23 vice president A&R and marketing for UTV Records, had
24 Universal Music Group yet acquired the Motown label?

25 A. Yes. I believe that Motown was actually --

1 actually trying to think. It was acquired first, I
2 believe, in 1988 by Boston Ventures. And then I
3 believe it was acquired by MCA. And then due to the
4 fact that Universal and PolyGram merged, it was part
5 of that entity. That's my recollection.

6 Q. When did you say that Motown was -- well,
7 you said that 1988 Motown was acquired by Boston
8 Ventures?

9 A. I believe so, yes.

10 Q. And then was it Boston Ventures that was
11 acquired by MCA or --

12 A. No. No. Excuse me for interrupting.

13 The label Motown was then sold by Boston
14 Ventures I believe to Universal or -- at a later
15 time. I'm not exactly sure of the time.

16 Q. Approximately?

17 A. Approximately '91. It's a guess.

18 Q. Okay. Did you study up on the history of
19 Motown within the Universal Music Group in order to
20 prepare for your deposition today?

21 A. No, I don't need to.

22 Q. Okay. So your knowledge of the acquisition
23 by Boston Ventures and the sale of the label to MCA
24 is just something you had in your mind?

25 A. I don't know that it was MCA exactly. It

1 may have been Universal. I'm not exactly sure, but
2 yes, it's just -- as I know about other acquisitions
3 that have happened in the industry, like A&M or
4 Island Records, I'm aware of that as well.

5 Q. Okay. So as vice president of A&R, did you
6 release any greatest hits albums by any Motown
7 artists?

8 A. At that -- yes. As we moved further on, not
9 at that exact moment, but as the label moved further
10 on, we did do a number of Motown or Motown-related
11 titles.

12 We did a Stevie Wonder Definitive
13 Collection. We did a Temptations Definitive Coll- --
14 or it's a two-CD set. I'm not exactly sure what the
15 title was. We did a Marvin Gaye Very Best Of. We
16 did a Diana Ross and The Supremes. We did a Smokey
17 Robinson and The Miracles. And we did a -- we did
18 two, actually, Motown Best Of's. We did a two-CD
19 Motown Best Of called "The Classic Years." And we
20 did a single-disc CD called "Motown Ones."

21 Q. How long --

22 A. I'm sorry. I just want to think for one
23 second to make sure I'm not leaving anything out.

24 I believe that's it.

25 Q. How long --

1 A. Sorry. Did I say Lionel Richie?

2 Q. You did not.

3 A. Lionel Richie and The Commodores. We did a
4 Lionel Richie definitive collection. That's -- which
5 includes -- included Lionel Richie repertoire and
6 Commodores repertoire in one, so a collection.

7 Q. Now, how long did you have the position of
8 vice president A&R and marketing for UTV Records?

9 A. Until approximately October -- again, the
10 time gets a little muddy during this period, but I
11 believe it was October of 2003. There was a
12 realignment within the division and my title changed
13 to vice president of consumer marketing and product
14 management during that moment, during that time.

15 Q. Did you say vice president consumer
16 marketing and product management?

17 A. Yes.

18 Q. And what was your job description as the
19 vice president of consumer marketing and product
20 management?

21 A. To create and implement marketing strategies
22 for our new releases as well as our brand lines. And
23 to also manage a staff of product management team.

24 Q. And what do you mean by "product
25 management"?

1 A. Each release, each new release and each
2 brand line is managed by an individual on my staff,
3 and so one individual could be responsible for the
4 Motown Classic Years piece. Another individual might
5 be responsible for another title, you know, a Def
6 Leppard Greatest Hits, or something like that. So
7 each -- the responsibilities and the brand lines are
8 broken up by the individual so we can manage
9 workload.

10 Q. All right. And so how long were you
11 vice president consumer marketing and product
12 management?

13 A. I don't recall exactly when it changed. It
14 was within the last two years. And at that point, I
15 became vice president of marketing. In essence, what
16 happened was my boss left and I was put in charge of
17 the marketing group.

18 Q. And what is your job description as
19 vice president marketing?

20 A. In essence, it's similar to vice president
21 of consumer marketing and product management, but
22 it's a bit broader in the sense that it also involves
23 more strategic marketing initiatives for the overall
24 Universal Music Enterprises company. So it's not
25 just specifically release related. It also can be

1 label related or related to a particular period of
2 time, for example, creating a Christmas marketing
3 strategy or a marketing strategy for an anniversary
4 of a label or something like that. And it also
5 involves more strategic marketing initiatives such as
6 brand alliances with outside companies.

7 Q. And you've been in this position for about
8 two years now?

9 A. Approximately, yes.

10 Q. Sir, you've been designated by UMG as a
11 person who is most knowledgeable regarding a list of
12 matters. And this is pursuant to Federal Rule of
13 Civil Procedure 30(b)(6).

14 Have you had an opportunity to take a look
15 at the notice of deposition in this matter that has
16 that list of topics?

17 MS. LEWIS: I would caution the witness that
18 any question that's going to be delving into
19 attorney-client communications, I've instructed not
20 to answer and I assume you don't want to hear about
21 those.

22 MR. ISER: I've only asked him if he's seen
23 the document.

24 Q. Have you seen the document, sir, entitled
25 "Amended Notice of Deposition of Opposer UMG

1 Recordings"?

2 MS. LEWIS: And I think if he's seen that in
3 the presence of counsel, then that would get
4 attorney-client product or attorney-client privilege
5 and work product, and I instruct him not an answer.

6 MR. ISER: Really? Most definitely not,
7 Counsel.

8 Here, let's mark this as the first exhibit.

9 (The document referred to was
10 marked as Exhibit 1 and later
11 remarked as Exhibit 100.)

12 BY MR. ISER:

13 Q. Let me show you Exhibit 1.

14 MS. LEWIS: Matter of housekeeping before we
15 do this?

16 MR. ISER: Yeah.

17 MS. LEWIS: Should we be resuming the
18 exhibit numbers with the last number from the last
19 exhibit -- or for the last deposition?

20 MR. ISER: Oh, that's fine with me.

21 MS. LEWIS: But I actually don't know what
22 that is. That just occurred to me right now.

23 MR. ISER: Why don't we start with 100.

24 MS. LEWIS: That makes sense.

25 MR. ISER: Okay.

1 MS. LEWIS: And do you have a copy as well
2 for us?

3 MR. ISER: Yes, yes, we have a copy for you.

4 MS. LEWIS: Thank you.

5 BY MR. ISER:

6 Q. Showing you what has been marked as
7 Exhibit 100, which for the record is a pleading
8 entitled "Amended Notice of Deposition of Opposer UMG
9 Recordings," comma, "Inc."

10 And, sir, have you seen this before?

11 MS. LEWIS: Same instruction.

12 MR. ISER: You're instructing not to answer?
13 Really? I didn't ask him what he discussed with
14 counsel. I'm only asking if he's seen the notice of
15 deposition which brings him here today.

16 MS. LEWIS: I think to the extent that he
17 has discussed this and seen it in the presence of
18 counsel, then you're delving into attorney-client
19 communications. You're welcome to ask him about the
20 contents.

21 MR. ISER: Well, yeah, but in order to lay a
22 foundation to ask him for the contents, I'm wondering
23 if he's ever seen the document before. I'm not
24 asking about any discussion he's had with counsel
25 about it. I'm asking has he ever seen the document.

1 You're also aware, Counsel, that if he
2 reviewed any documents in preparation for his
3 deposition, I'm entitled to find out what he
4 reviewed.

5 MS. LEWIS: I'll allow it, but I -- I
6 caution you not to get into the actual substance of
7 any communications with him.

8 MR. ISER: I'm not going to ask about your
9 communications with him. If I do, I'm sure you
10 will -- I'm sure you'll bring that to my attention,
11 but it certainly is not my intention.

12 Q. So the question is, I believe counsel will
13 allow you to answer, have you ever seen this document
14 before today?

15 A. There was a pile of papers, but I don't
16 recall seeing this particular document.

17 MR. ISER: Okay. Let me ask, Counsel, given
18 that the witness has not seen this document, there
19 are nine categories set forth in the notice of
20 deposition Exhibit 100. Can you tell me which --
21 first of all, is this witness being designated with
22 respect to all nine categories?

23 MS. LEWIS: He is not.

24 MR. ISER: Okay. Can you tell me which
25 categories he's been designated on?

1 MS. LEWIS: Sure thing. And with the
2 understanding, of course, that some of them are very
3 broad, so I think to a certain extent, for example,
4 number 1, he is designated in connection with that
5 but something having to do with UMG's use of the mark
6 Motown in commerce including but not limited to the
7 use of the mark Motown in connection with toys,
8 games, and playthings, that's broad. He might be the
9 correct person in connection with some questions
10 under that. He might not with others.

11 He would also be designated in connection
12 with the -- with the same understanding, 2nd, 3rd,
13 4th, 6th, 7th. We object to the 8th because you did
14 as well. And 9.

15 MR. FITZGERALD: Sorry. Are you objecting
16 to 9 or is he designated on number 9?

17 MS. LEWIS: He's designated on 9.

18 MR. FITZGERALD: Okay.

19 BY MR. ISER:

20 Q. In your position as the vice president at
21 Universal Music Group, to whom do you report, sir?

22 A. I report to our general manager, Mike Davis.

23 MR. ISER: Now, also I believe counsel
24 arrived here today with some additional products that
25 have not been provided to us prior to today. Am I

1 correct, Counsel?

2 MS. LEWIS: You're correct. We recently
3 came across those.

4 MR. ISER: Okay. And they're in the box on
5 the far end of the conference room. Right?

6 MS. LEWIS: Correct.

7 MR. ISER: Okay.

8 Q. Mr. Moskow, did you do anything to prepare
9 for your deposition today?

10 A. Met with counsel.

11 Q. Okay. Other than meeting with counsel, did
12 you do anything to prepare?

13 A. No.

14 Q. Did you do anything to locate any documents?

15 A. No.

16 Q. Did you do anything to locate any products?

17 A. No.

18 Q. Did you do anything to locate any toys that
19 have anything to do with the Motown label?

20 A. No.

21 Q. There's a box of items located at the far
22 end of the conference table and --

23 MS. CHO: Do you want them?

24 MR. ISER: Yeah.

25 Q. There is a -- what appears to be a plastic

1 microphone.

2 MS. LEWIS: That's actually a pen.

3 MR. ISER: It's what?

4 MS. LEWIS: It's a giant pen shaped like a
5 microphone.

6 MR. ISER: Oh, yeah. In fact, it says
7 "Microphone Pen" on it.

8 Q. Is this something that you obtained, this
9 product prior to the --

10 A. No.

11 Q. No?

12 A. I -- I did not.

13 Q. Have you ever seen this microphone pen
14 before today?

15 A. Yes.

16 Q. Okay. And there's a -- a metal, I guess
17 it's a plate in the shape of a Motown record. Am I
18 describing that correctly?

19 A. Yes.

20 Q. And did you do anything to locate this item?

21 A. I did not have to locate that item. That
22 item came from my office.

23 Q. Oh, okay. So did you provide this to
24 counsel?

25 A. Yes, I did.

1 Q. What was it doing in your office?

2 A. Sitting on my table.

3 Q. Okay. I'm also holding up -- which is a
4 stuffed animal. Have you seen this before today?

5 A. Yes, I have.

6 Q. And did this also come from your office?

7 A. No, it did not.

8 Q. All right. And it's a -- I guess a -- is it
9 fair to describe this as a small pink bear with the
10 Motown mark on its chest?

11 A. Yes, I would.

12 Q. Okay. But you did not obtain this prior to
13 the depo?

14 A. I did not.

15 Q. Do you know where it came from?

16 A. Yes, I do.

17 Q. Where did it come from?

18 A. I believe it came from the Motown store in
19 the Detroit airport.

20 Q. Ah, okay. Going back to the microphone pen,
21 do you know where this was obtained?

22 A. I don't know for sure. I believe the same
23 place.

24 Q. You believe the Motown store in the Detroit
25 airport?

1 A. I believe so, yes.

2 Q. And it has a some words on the side of the
3 microphone pen that say "Hitsville U.S.A."

4 Do you see those words?

5 A. Yes, I do.

6 Q. Do you know what that refers to, Hitsville
7 U.S.A.?

8 A. Yes, I do.

9 Q. And does that refer to?

10 A. Hitsville U.S.A. is the location of the
11 Motown headquarters, the original Motown headquarters
12 in Detroit.

13 Q. Is there a city called Hitsville?

14 A. Is there a city -- not to best of my
15 knowledge.

16 Q. When you say location of the original Motown
17 headquarters, is there a place known as Hitsville?

18 A. There is a place known as Hitsville, yes.

19 Q. And is it more than a building? Or several
20 buildings?

21 A. It is -- to the best of my knowledge in this
22 particular instance, it is -- Hitsville is a
23 building.

24 Q. Ah, okay. So it's not its own city or town.
25 Correct?

1 A. Some people may refer to Detroit as
2 Hitsville. I'm not sure.

3 Q. Okay. Do you refer to Detroit as Hitsville?

4 A. I do not.

5 Q. Did you ever live in Detroit?

6 A. I did not.

7 Q. Do some people refer to Detroit as Motown?

8 A. Absolutely.

9 Q. Okay. And what about people referring to
10 Detroit as Motor City?

11 A. Yes.

12 Q. We have another pen. I think that --- this
13 is a pen? Yes, it is.

14 MS. LEWIS: Yes.

15 MR. ISER: Okay. I'm holding up what would
16 be a pink pen also in this box.

17 Q. Have you seen this before today?

18 A. Yes, I have.

19 Q. Do you know where it was obtained?

20 A. I believe again the airport store in
21 Detroit.

22 Q. And it has a -- it has words on the side
23 that say "Motown Music Review." Do you see that?

24 A. I do.

25 Q. Do you know what's referred to by "Motown

1 Music Review"?

2 A. I do not.

3 Q. Have you ever heard the expression Motown

4 Music Review --

5 A. I have not.

6 Q. -- prior to today?

7 A. No, I have not.

8 Q. Okay. You've got to just let me finish the
9 questions.

10 A. Of course. Pardon me.

11 Q. I'm now holding up something else in the
12 box, which the box calls it a mood light.

13 MS. LEWIS: Push the button on the bottom.

14 MR. ISER: Sort of like E.T.

15 Q. And there's a logo at the bottom that says
16 "Motown Music." Do you see that?

17 A. Yes.

18 Q. Okay. Have you seen this product before?

19 A. Yes.

20 Q. And do you know where it was obtained?

21 A. I believe the airport store in the Detroit
22 airport.

23 Q. Okay. Do you know who obtained these in the
24 store at the Detroit airport?

25 A. I believe -- I'm not exactly sure which of

1 these or if any of these were acquired, but I believe
2 there were some photos taken by one of my product
3 managers whose name is Jill Ettinger.

4 Q. When you say Jill Ettinger took some
5 photographs, photographs of what?

6 A. Of the airport store in the Detroit airport.
7 The Motown store in the Detroit airport.

8 Q. And do you believe that this mood light is
9 one of the products from the Motown store at the
10 Detroit airport?

11 A. I do.

12 MS. LEWIS: Might want to turn it off before
13 it goes back in the box.

14 MR. ISER: How does one do that?

15 MS. LEWIS: Push the button.

16 MR. ISER: Oh, I see you're familiar with
17 it, Counsel. That's very good. All right.

18 Q. And then I have another product that's in a
19 bag which looks like a ball within a ball. Do you
20 see that?

21 A. Hm-hm.

22 Q. I don't know what the official name for
23 something like this is. But do you see this product
24 in my hand and it has a phrase "Motown Music
25 Detroit." Do you see that?

1 A. Yes.

2 Q. Do you know where this product was obtained?

3 A. I believe the airport store, the Motown
4 airport store in Detroit.

5 Q. Did Jill Ettinger photograph this item as
6 well?

7 A. Photograph? Not to my knowledge.

8 Q. What was the point of Jill Ettinger
9 photographing the airport store, the Motown store at
10 the Detroit airport?

11 A. Two reasons. She was in Detroit for a
12 Motown reunion. She was traveling through the
13 Detroit airport. And in preparation for our Motown
14 50 anniversary celebration and our aggressive
15 merchandise business that we're going to be pursuing,
16 she took photos of existing Motown-branded
17 merchandise in the store.

18 Q. And where are those photographs today?

19 A. I believe they are in her office.

20 MS. LEWIS: I'll represent that I've
21 actually produced those to your associate on Friday.

22 MR. ISER: On Friday?

23 MS. LEWIS: Hm-hm.

24 MR. ISER: Okay.

25 Q. Now I'm holding up a tiny harmonica on what

1 appears to be a key chain. Am I describing that
2 correctly?

3 A. Yes, you are.

4 Q. Okay. And it has a Motown Records label on
5 there?

6 A. That's correct.

7 Q. And do you know where this product was
8 obtained?

9 A. I believe the Detroit airport Motown store.

10 Q. Okay. Have I asked you already who obtained
11 all of these documents -- excuse me. Strike that.

12 Who obtained all of these products that
13 we've been looking at from the Motown store at the
14 Detroit airport?

15 A. I believe that some of them were brought
16 back by Jill Ettinger based on her visit, but I
17 cannot sit here and tell you that all of them were.
18 I honestly don't know that all of them were.

19 Q. Okay. Now I'm holding up a green pencil
20 which is twisted in the shape of a guitar at the top.
21 Have I described that correctly?

22 A. Yes, you have.

23 Q. And it says on there "Motown" -- it says on
24 the side, "Motown, Detroit, Michigan." Do you see
25 that?

1 A. Yes, I do.

2 Q. Is this another product that Ms. Ettinger
3 obtained from the Motown store at the Detroit
4 airport?

5 A. I don't know that she obtained it, but it is
6 a product that's sold in the store.

7 Q. Okay. And finally -- finally in terms of
8 what's in this box -- there is a -- what looks to be
9 a CD with the label "Universal Music Family." And at
10 the bottom, the title of the CD is "Motown for Kids."

11 Am I describing this correctly?

12 A. Yes, you are.

13 Q. And have you seen this product before today?

14 A. Yes, I have.

15 Q. And could you just tell me where you've seen
16 it?

17 A. That's a new children's line of music that
18 the Universal Music Group and specifically Universal
19 Music Enterprises has released this year. I believe
20 in the month of August.

21 Q. Okay. Now, you've mentioned -- we've talked
22 about the Motown store in the Detroit airport. Now,
23 is there a chain of Motown stores in various airports
24 throughout the country?

25 A. Not to my knowledge.

1 Q. Is the Motown store in the Detroit airport
2 the only Motown store of its kind?

3 A. There are Motown products that are sold in
4 the Hitsville Motown museum. I don't know that they
5 are the exact same products that you're referring to
6 here. But to answer your question specifically, I
7 believe it is -- I believe it is the only Motown
8 store in an airport.

9 Q. As the vice president of marketing, do you
10 have any responsibilities for the Motown store that's
11 located in the Detroit airport?

12 A. No, I do not.

13 Q. Is there somebody within your organization
14 that's responsible for the operation of that store?

15 A. The operation? No.

16 Q. How about have any responsibilities
17 whatsoever with respect to that store?

18 A. At one point, yes. Licensing product to
19 that store for sale.

20 Q. So is it correct that the Motown store
21 that's located in the Detroit airport is not owned by
22 Universal Music Group?

23 A. Not to my knowledge.

24 Q. Do you know who owns it?

25 A. No, I don't.

1 Q. Do you believe that -- do you have any
2 understanding or information or belief whatsoever
3 that the owner of the Motown store in the Detroit
4 airport operates it under a license from Universal
5 Music Group?

6 A. My understanding is that the sale of the
7 product and the use of the mark has been provided by
8 the Universal Music Group.

9 MR. ISER: Could you read back that answer,
10 please.

11 (Record read as follows:

12 "ANSWER: My understanding is
13 that the sale of the product and
14 the use of the mark has been
15 provided by the Universal Music
16 Group.")

17 BY MR. ISER:

18 Q. And I'm confused by your answer, sir, so let
19 me just delve into it a little bit.

20 When you say sale of the product has been
21 provided by the Universal Music Group, what do you
22 mean?

23 A. I believe that's -- I believe I misspoke
24 there.

25 What I meant to say, if I may clarify --

1 Q. Please.

2 A. -- is that the license for the Motown mark
3 provided on the product is provided to the Detroit
4 airport store by the Universal Music Group.

5 Q. Okay. So are you saying that Universal
6 Music Group has licensed the use of the mark for the
7 various products on sale at the Motown store at the
8 Detroit airport?

9 A. To the best of my knowledge, yes.

10 Q. Okay. Have you ever seen that license
11 agreement?

12 A. I have not.

13 Q. Do you know when that license agreement was
14 entered into?

15 A. I do not.

16 Q. Do you believe there's a written license
17 agreement with respect to the use of Motown marks on
18 products sold at the Motown store?

19 A. I would think so, but I don't have any
20 specific knowledge to that.

21 Q. If you wanted to -- if you had this burning
22 desire to find out the answer, when you went back to
23 the office today, who would you ask if you wanted to
24 obtain the license between Universal Music Group and
25 the Motown store in the Detroit airport for the use

1 of the Motown mark on products?

2 A. It's not a simple question as it seems. The
3 reason for that is the person who I would have asked
4 is no longer with the company. And she --

5 Q. And who -- I'm sorry.

6 MS. LEWIS: And I don't mean to interrupt
7 but I'll also just represent that the license
8 agreement is in your possession as well.

9 MR. FITZGERALD: It was produced on Friday.

10 MR. ISER: Oh, okay.

11 MR. FITZGERALD: Would you like to see it?

12 MR. ISER: Yeah, okay. See, I wasn't even
13 aware of that, so. That will save us some time
14 indeed.

15 MS. LEWIS: That's why I interrupted.

16 MR. ISER: Thank you, Counsel.

17 MS. LEWIS: Do you want to take a break
18 while you guys look over the documents?

19 MR. ISER: Sure. I mean, I don't need to
20 take a break, but if you'd like to --

21 MS. LEWIS: No. It's up to you.

22 MS. CHO: Can we take a minute to run to the
23 restroom?

24 MR. ISER: Want to take a break?

25 MS. CHO: Want to run to the restroom.

1 MR. ISER: Of course. Of course.

2 (Recess taken.)

3 BY MR. ISER:

4 Q. Let's go back on the record.

5 We spoke while we were off the record and
6 you -- I think we wanted to clear up that before that
7 metal plate in the shape of a record was obtained
8 from your office, it actually came from the Motown
9 store in the Detroit airport. Correct?

10 A. Yes.

11 Q. Okay. Was there anything else we needed to
12 clear up?

13 MS. LEWIS: I think that's it.

14 MR. ISER: Okay.

15 Q. We have a couple other products here that I
16 should just deal with for a moment. This would be
17 the Tooth Tunes, Music in Your Mouth Electric
18 Toothbrush. Do you see that?

19 A. I do.

20 Q. Okay. Have I described it correctly?

21 A. You have.

22 Q. Okay. And do you know where this was
23 obtained?

24 A. I do. When we were meeting -- when I was
25 meeting with counsel --

1 Can I talk about this?

2 MS. LEWIS: Don't talk about what happened
3 with our communications with counsel. I might be
4 able to clear up some confusion by just talking to
5 you directly, Larry.

6 That obviously is not a Motown product.
7 However, we understand there is one and we're looking
8 for one. And rather than trying to describe to you
9 what the Tooth Tunes Mouth Magic product would be, we
10 thought we'd bring you along an example of a
11 different one.

12 MR. ISER: Ah. Well, that was my next
13 question because I don't know the Motown mark
14 anywhere on this product.

15 Q. So now the Black Eyed Peas, are they
16 affiliated with Motown?

17 A. They are not.

18 Q. Okay. Have you actually used this
19 toothbrush to see whether the music plays while
20 you're brushing your teeth?

21 A. I have. And my son does.

22 Q. Really?

23 A. Yes.

24 Q. And it's a -- it's a cool musical
25 experience?

1 A. It's more about the song playing through, so
2 you brush your teeth through the entire time the song
3 is playing.

4 Q. Oh, so for the length of the song?

5 A. Hm-hm.

6 Q. That's clever.

7 And our surmise is that there's actually one
8 that bears the Motown mark?

9 MS. LEWIS: That is our surmise, yes.

10 MR. ISER: All right.

11 Q. And are these sold wherever better
12 toothbrushes are sold or are these sold in record
13 stores?

14 A. I believe toothbrushes. Where toothbrushes
15 are sold.

16 Q. And then we have a -- now, did Motown or
17 Universal Music Group enter into a license with the
18 manufacturer of these Tooth Tune products?

19 A. Yes.

20 Q. Okay. And do you know when that was?

21 A. I do not know personally. I don't know.

22 Q. Okay. Do you have any information about it?
23 In this setting of the 30(b)(6) deposition, if you
24 have any information, you can tell us unless the only
25 source is counsel. If you have any information from

1 within the company, you can tell me.

2 A. Yeah. The licensing for those products goes
3 through our TV and film licensing group and there are
4 a number of songs that have been licensed to Tooth
5 Tunes, one of which is Jackson 5's "ABC" which is a
6 Motown master.

7 Q. So you believe somewhere out there there's
8 going to be an "ABC" toothbrush out there?

9 A. Yes.

10 Q. Will it bear the Motown mark?

11 A. I don't know.

12 Q. Was that part of the license that it would
13 have to say "Motown" on there?

14 A. I don't know. I'm not versed enough to
15 answer that.

16 Q. The best of your knowledge, all that's been
17 licensed to Tooth Tunes are certain master
18 recordings?

19 A. I don't know.

20 Q. Okay.

21 A. The master recording is included, but I
22 don't know the scope of the license.

23 Q. Okay. Have you ever seen the license ...
24 agreement?

25 A. I have not.

1 Q. Why is something like this licensed through
2 TV and film licensing as this is a toothbrush?

3 A. They do -- in addition to the TV and film
4 licensing, they do other uses. So, for example, if
5 there is a James Brown doll that you push a button
6 and it sings "I Feel Good," that would -- master
7 would be licensed through our TV and film. Or
8 certain things like that.

9 Q. All right. So your son actually uses a
10 Tooth Tunes product for brushing his teeth?

11 A. Yes.

12 Q. All right. And it's a real working
13 toothbrush?

14 A. Yes.

15 Q. All right. Do you consider this to be a
16 toy, sir?

17 A. It's both.

18 Q. It's both a toy and a toothbrush?

19 A. I consider it to be both, yes.

20 Q. And what is the play pattern as a toy?

21 A. It plays the music through your teeth when
22 you're brushing and he loves it. And it makes him
23 brush his teeth longer because he enjoys the
24 experience.

25 Q. Okay. What I'm saying, is there a play

1 pattern other than brushing your teeth with this
2 product, the Tooth Tunes, as a toy?

3 A. Other than it makes brushing your teeth fun,
4 no, not that I'm aware of, but.

5 Q. Okay. Finally, the last product that was
6 brought in here that we hadn't seen before today is
7 the -- a clock, what would appear to be a Motown
8 clock. Am I describing that correctly?

9 A. Yes.

10 Q. And do you know where this product was
11 obtained?

12 A. I don't know for sure. I surmise the Motown
13 Detroit airport store, but I don't know for sure.

14 Q. Okay. Does this clock also play music?

15 A. I don't know.

16 Q. And there's no battery so we can't find out,
17 but.

18 Let's mark this as Exhibit 101.

19 (The document referred to was
20 marked as Exhibit 101.)

21 BY MR. ISER:

22 Q. Exhibit 101 for the record is entitled
23 "Intellectual Property License Agreement." And it is
24 an agreement dated as of December 1, 2001, between
25 Motown Record Company in New York and C-A -- all

1 caps. Looks like Cal, but it's CA1 Services, Inc.

2 And, sir, have you ever seen this document
3 before?

4 A. No, I have not.

5 Q. This was produced to us. And counsel has
6 represented that it is the license agreement for the
7 operation of the Motown store in Detroit airport. Is
8 it correct that you cannot identify it as such?

9 A. I don't -- I haven't read it, so I don't
10 know if it is or is not.

11 Q. Okay. All right. Do you know how many
12 stores there are in the Detroit airport, whether it's
13 one or two?

14 A. Are you asking Motown stores or --

15 Q. Motown stores, yes.

16 A. I believe there's one, but I haven't been
17 there myself so I don't know for sure.

18 Q. Do you know why, sir, it was determined to
19 locate Motown stores in the Detroit airport?

20 A. Because that's the home of the label. Home
21 of the Motown label.

22 MR. ISER: Also, let's mark as Exhibit --
23 and counsel's indicated that UMG is going to
24 designate another 30(b)(6) witness who's competent to
25 testify about license agreements.

1 Correct, Counsel?

2 MS. LEWIS: Correct.

3 MR. ISER: Okay. And that it's not this
4 witness. Correct?

5 MS. LEWIS: Correct.

6 MR. ISER: Okay. Let me then mark as the
7 next exhibit a collection of photographs bearing
8 Bates numbers UMG 167 through 172. This is 102.

9 (The document referred to was
10 marked as Exhibit 102.)

11 BY MR. ISER:

12 Q. Would you agree with me, sir, that
13 Exhibit 102 is comprised of five photographs?

14 A. Six, I believe. One, two, three, four,
15 five -- six photographs.

16 Q. Thank you. Six photographs?

17 A. Yes.

18 Q. And is it correct that the photographs
19 depict both the store and the merchandise contained
20 in the Motown store at the Detroit airport?

21 A. To the best of my knowledge, yes.

22 Q. Are these --

23 A. Except -- I'm sorry for interrupting you --
24 the last photo looks like product that was acquired
25 from the store but taken in our office in Santa

1 Monica.

2 Q. Ah, okay. Very good.

3 So with respect to the first five
4 photographs in Exhibit 102, are these the photographs
5 you referred to earlier as having been taken by
6 Ms. Ettinger?

7 A. Yes.

8 Q. Okay. Were there other photographs taken by
9 Ms. Ettinger which did not find themselves into this
10 exhibit?

11 A. Not to my knowledge.

12 Q. Okay. She only took five and these are
13 them. Right?

14 A. To the best of my knowledge, yes.

15 Q. And can you tell me why Ms. Ettinger took
16 these photographs?

17 A. Yes. We are undertaking a very aggressive
18 merchandise push for Motown's 50th anniversary. And
19 in preparation for that and also in preparation for
20 our -- the creation of our style guide, which breaks
21 down how the logo is to be applied to all licensed
22 products, she took photos to see how this was
23 actually being manifested at a retail location.

24 Q. Okay. And does Ms. Ettinger work for you?

25 A. She does.

1 Q. When is the Motown 50th anniversary?

2 A. The technical anniversary date is
3 January 12th, 2009. The anniversary celebration, as
4 we've defined it, runs through the fall of 2008 into
5 and through the middle of 2010.

6 Q. So it's a long anniversary celebration?

7 A. It's an anniv- -- sorry for interrupting.
8 Anniversary celebration, yes.

9 Q. Fall of '08 through the middle of '10, 2010?

10 A. Correct.

11 Q. So has the celebration commenced?

12 A. Almost about -- just about to commence.

13 Q. Okay. As I look through these photographs
14 depicted in Exhibit 102, I do not see any photographs
15 depicting toy vehicles.

16 Do you see any toy vehicles depicted in any
17 of the photographs in Exhibit 102?

18 A. I haven't taken the time to study them, but
19 as I'm looking, I don't see them. However, I don't
20 know that -- they may very well be there.

21 Q. Well, let me ask you that question. Do you
22 know whether or not there are any toy vehicles that
23 have been licensed by Universal Music Group for the
24 Motown mark?

25 A. I don't know that there have been or have

1 not been. I don't have knowledge to that.

2 Q. Have you ever seen a toy vehicle bearing a
3 Motown mark?

4 A. Bearing an official Motown mark? Not to my
5 knowledge.

6 Q. Okay. To the best of your knowledge, has
7 Motown or Universal Music Group ever licensed a third
8 party to manufacture a toy vehicle bearing a Motown
9 mark?

10 A. I don't know.

11 Q. Can you think of a single example as you sit
12 here today?

13 A. No, I can't.

14 Q. Are there any plans that you are aware of as
15 the vice president of marketing to license the
16 manufacture of toy vehicles bearing the Motown mark?

17 A. We don't know that answer yet. We've
18 created the style guide that is a breakdown of how
19 the market's to be used on all licensed product. We
20 are going to be laying that out to the marketplace
21 and hiring different companies to represent the
22 Motown brand to various companies and we're not sure
23 what will come back yet. We're not sure the level of
24 interest from all different market segments, but
25 we're not limiting ourselves to just apparel, for

1 example. There could be any number of people
2 interested in using the Motown mark for things.

3 Q. Okay. Are you aware as you sit here today,
4 sir, of any plan to license the Motown mark for use
5 on a toy vehicle?

6 A. Same answer as I just gave. So that would
7 be no, I'm not aware of anything specific. However,
8 it's a broad -- we're casting a wide net to the
9 marketplace, that there could be interested --
10 interest in it, so we would want to license the name
11 to that.

12 Q. Do you know as the vice president of
13 marketing which entity is the leading manufacturer of
14 toy vehicles?

15 A. I do not.

16 Q. Have you ever heard of Hot Wheels brand?

17 A. Yes.

18 Q. Okay. Do you know whether or not Hot Wheels
19 is the leading manufacturer of toy vehicles?

20 MS. LEWIS: Objection. Calls for
21 speculation.

22 Oh, you can answer.

23 THE WITNESS: Oh, I can answer.

24 MR. ISER: If she doesn't tell you --

25 THE WITNESS: I don't know. I don't know.

1 I used to collect Hot Wheels and MatchBox, but I
2 don't know which -- I have no idea.

3 BY MR. ISER:

4 Q. Do you still have the Hot Wheels cars that
5 you collected?

6 A. No.

7 Q. How old were you when you collected Hot
8 Wheels cars?

9 MS. LEWIS: Objection. Relevance.

10 BY MR. ISER:

11 Q. You may respond.

12 A. Seven.

13 Q. Do you, sir, have knowledge about how the
14 term "Motown" was selected for -- originally to
15 identify the label?

16 A. The knowledge I have is a historical
17 knowledge, which is that Detroit was known -- is
18 known as the Motor City. And Berry Gordy originally
19 was considering calling the label Mocity, combining
20 the term "motor" and "city" but shortening them, but
21 felt that using the word "town" and combining them as
22 Motown would provide more of a homey feel, and that's
23 why he went with the term "Motown" as opposed to
24 "Mocity." That's my knowledge.

25 Q. And where did you get that knowledge?

1 A. Originally I believe it was from Mr. Gordy's
2 book or perhaps it was just from discussion over the
3 years in the industry.

4 Q. Do you know whether or not before he founded
5 what became known as Motown whether Mr. Gordy
6 actually worked on the assembly lines at the Ford
7 Motor Company?

8 A. I don't know which company he worked for,
9 but I believe he did work for an automobile company.

10 Q. Are you aware that when he started Motown as
11 a record label, Mr. Gordy utilized an assembly line
12 kind of approach to organizing the business of
13 Motown?

14 A. I've heard that mentioned, yes.

15 Q. Now, counsel's indicated that you're not
16 familiar with the license agreements, but just let me
17 check to find out the level of your knowledge, if
18 any.

19 Are you aware, sir, of a license
20 agreement -- it's actually a master merchandising
21 agreement -- with an entity known as Stronghold
22 Group?

23 A. Yes.

24 Q. And what knowledge do you have of that?

25 A. All I know is that there was a license

1 entered into with them and I believe it applies to
2 the -- I don't know if this is the entire scope, but
3 I believe it applies to the Motownopoly game.

4 Q. Do you know whether the master merchandising
5 license agreement with the Stronghold Group is still
6 active?

7 A. I don't know.

8 Q. Are you aware of a separate license
9 agreement for the use of the Motown mark on the
10 Motownopoly game?

11 A. I'm not aware of the details, no.

12 Q. Have you ever seen that agreement?

13 A. No, I haven't.

14 Q. Have you ever seen the agreement with the
15 Stronghold Group?

16 A. I have not.

17 Q. Okay. Do you know whether or not the
18 Motownopoly board game is still being -- is still
19 available for sale at retail?

20 A. I don't know.

21 Q. Do you know the last time that it was
22 available for sale?

23 A. Within the last few years, but I don't know
24 specifically.

25 Q. And you don't know the status of that

1 license?

2 A. I do not.

3 Q. Are you aware of a license with The Singing
4 Machine company?

5 A. I'm aware that we have a deal with Singing
6 Machine. I'm not aware of the specifics of the
7 license.

8 Q. Do you believe that the deal with The
9 Singing Machine company is still active?

10 A. I don't know.

11 Q. Do you know whether the license agreement
12 with The Singing Machine company has expired?

13 A. I don't know.

14 Q. Looking down to the far end of the
15 conference room table, do you recognize the product
16 that's at the end?

17 A. Yes, I do.

18 Q. Is that the karaoke machine?

19 A. Yes, it is.

20 Q. And it's in the shape of a juke box?

21 A. That's correct.

22 Q. Is that the product that's manufactured by
23 The Singing Machine company?

24 A. I believe it is, yes.

25 Q. Do you know whether you can still buy those

1 for sale at retail?

2 A. I don't know.

3 Q. When's the last time that you're aware that
4 that product, that Singing company karaoke machine
5 was available for sale to the public?

6 A. It may still be available, but I know the
7 first time I saw it was a few years ago.

8 Q. Are you aware of a license -- by the way,
9 have you ever seen the agreement with the Singing
10 company, the license agreement with the Singing
11 company?

12 A. I have not.

13 Q. And forgive me if I already asked this.
14 Have you ever seen the license agreement for the
15 manufacture of Motownopoly, the board game?

16 A. I have not.

17 Q. Is there somebody within your group that's
18 responsible for administration of license agreements
19 or licensing out the Motown mark for manufacture of
20 merchandise?

21 MS. LEWIS: Objection. Vague and ambiguous
22 when you say his group.

23 MR. ISER: And he's the vice president of
24 marketing.

25 Q. Is there somebody that reports to you that's

1 responsible for administration of merchandising
2 licenses?

3 A. On a corporate level, on a -- and by -- talk
4 about UME or UMG, the license would be executed by
5 business affairs group, to the best of my knowledge.
6 There are -- there is an individual working -- two
7 individuals actually working in my group right now
8 who are preparing, have prepared the -- have prepared
9 some items for going out -- the style guide, for
10 example -- for going out and acquiring merchandise
11 rights, but those people will not be executing the
12 license.

13 Q. Okay. Is there somebody within the business
14 affairs organization that's responsible for
15 administering the license agreements for the use of
16 the Motown trademark on merchandise?

17 A. Yes. I don't know who that would be today
18 but because the person who was doing it is no longer
19 with the company.

20 Q. Who was doing that?

21 A. Lori Froeling. L-o-r-i and last name is
22 spelled F-r-o-e-l-i-n-g.

23 Q. Do you know where Lori works today?

24 A. No, I don't.

25 Q. Are you aware of a license agreement with

1 the Hasbro toy company with respect to a product
2 known as HitClips?

3 A. Yes.

4 Q. And have you ever seen that agreement?

5 A. I have not.

6 Q. Do you know if it's still in existence?

7 A. I do not know.

8 Q. Do you know, is it correct that this was a
9 license of master recordings for use on miniature
10 phono records?

11 A. I don't know what the actual agreement says,
12 but in the HitClips that I've seen, it's a -- it's a
13 plastic device that you press and music plays.
14 That's really the scope of my knowledge on it. It's
15 a --

16 Q. Do you know if HitClips products are
17 available at retail today?

18 A. I don't know.

19 Q. Do you know the status of the license?

20 A. I do not.

21 Q. Does a license of master recordings by
22 Universal Music Group occur someplace other than
23 licensing for merchandise?

24 A. I'm sorry. I don't -- can you --

25 Q. Well, if I want to license a master

1 recording for use in a product from Universal Music
2 Group, do I go to the same person that I might go to
3 if I want to operate a Motown store in Calabasas?

4 A. I don't really know who you would go to. I
5 would -- I think the center -- there's two places
6 where you would go. One is the -- again, the TV and
7 film area, which is the place where -- I'm guessing
8 this -- but most likely HitClips or the toothbrushes
9 and things of that nature would be licensed through.
10 And the other, there would have to be some sort of
11 business affairs involvement. Those are the two
12 areas that I know of.

13 Q. On these HitClips devices, the way you
14 described it says to me that you've actually had one
15 in your hand and you've operated it. Correct?

16 A. Hm-hm.

17 Q. Correct?

18 A. Yes.

19 Q. Is it the complete song or just a clip of
20 the song?

21 A. I believe it's a clip of the song. But it's
22 been a long time since I've actually operated it, so
23 I can't say with a hundred percent certainty.

24 Q. How long ago was it that you operated one of
25 them?

1 A. Years.

2 Q. More than five?

3 A. No.

4 Q. More than two?

5 A. Probably.

6 Q. Would it be correct, sir, that if I were to
7 ask you questions about the number of units sold of
8 the various products that we've just discussed -- the
9 karaoke machine, the HitClips, the Motownopoly --
10 that you would not be able to talk about that?

11 A. That's correct. I would not know that.

12 Q. Okay. Other than the Motownopoly board game
13 that we've talked about, are you aware of any other
14 board games that have been licensed to use the Motown
15 mark?

16 A. That I have personal knowledge of? No.

17 Q. How about any knowledge whatsoever?

18 A. None that I know of.

19 Q. And these HitClips that you actually held
20 one in your hand, when you press the button, it
21 played a clip of the licensed song. Correct?

22 A. It's my recollection, yes.

23 Q. Does it do anything else?

24 A. I don't recall.

25 Q. Do you consider that that product, that

1 HitClips product that you operated, do you consider
2 that to be a toy?

3 A. I do.

4 Q. And what is the play pattern?

5 MS. LEWIS: Objection on -- vague and
6 ambiguous in terms of the phrase "play pattern."

7 BY MR. ISER:

8 Q. Okay. You can respond.

9 A. It's been so long since I've operated it, I
10 really don't -- I don't recall. There may have been
11 lights or something like that, but I really don't
12 recall specifically what the game -- the item did. I
13 know there was music involved, I know it was an item
14 that was created and marketed and sold to children,
15 but I don't know, as you've described it, the play
16 pattern. I --

17 Q. Okay. Other than pressing the button and
18 hearing the music play, you can't think of anything
19 else that it does. Correct?

20 A. I theorize it may have lit up, but I
21 don't -- I can't say with a hundred percent certainty
22 that that's what it did.

23 Q. Right. When you theorize, you're
24 speculating?

25 A. I'm -- it's my recollection it may have lit

1 up, but it's been years so I don't recall exactly.

2 Q. Because when you say it's my recollection it
3 may have lit up as compared to it's my recollection
4 it did light up, I'm trying to find out if you do
5 have a present recollection as you sit here today
6 that, after you pressed a button, the product
7 actually, in fact, lights up?

8 A. No, I can't say that with certainty.

9 Q. Do you know how those products sold?

10 A. I do not.

11 Q. Fair to say they're, in their essence, a
12 playback device for clips of popular music?

13 A. I don't know. I mean, that's part of them,
14 yes.

15 Q. All right. If it doesn't light up in the
16 main, what it is, is a playback device for a sound
17 recording. Correct?

18 MS. LEWIS: Objection. Argumentative.

19 THE WITNESS: I can't really answer because
20 I don't recall what else it does.

21 BY MR. ISER:

22 Q. Okay. And other than pressing a button, you
23 can't tell me anything a child would do with it other
24 than pressing a button to hear a clip of music?

25 MS. LEWIS: Objection. Speculation.

1 THE WITNESS: I can't recall what else it
2 does.

3 BY MR. ISER:

4 Q. All right. Now, the Motown karaoke machine
5 that's there, is that limited to playing only Motown
6 songs or can you put any kind of song into that, if
7 you know?

8 A. I don't know whether it plays back CDs as
9 well. I do know that it's been made specifically for
10 a line of karaoke CDs that were created and licensed
11 to the Singing Machine for use in the machine. I
12 don't know if that's the scope of it, but I know --

13 Q. And licensed by Universal Music Group?

14 A. Yes.

15 Q. And was it licensed only karaoke CDs that
16 played Motown hits, or were there other hits as well
17 licensed to the Singing company for use in this
18 device?

19 A. As I know it, and I was not involved in the
20 licensing agreement, there was a series of
21 Singing-Machine-branded Motown CDs that were created
22 for use in that device. There may be other Singing
23 Machine CDs, karaoke CDs, that may actually play in
24 that device, but I don't know because that's not an
25 area that I'm involved in.

1 Q. And to which segment of the population are
2 those karaoke machines marketed?

3 A. Karaoke fans wouldn't be an acceptable
4 answer?

5 Q. It would be.

6 A. I think it's -- it's a wide range. I mean,
7 what I personally believe it to be are children
8 through adults. It's a family game that families can
9 play together, that children and adults can play
10 together. That's what I -- that's my personal
11 experience with it.

12 Q. All right. Do you consider that karaoke
13 machine to be a toy, sir?

14 MS. LEWIS: Objection. Asked and answered.

15 THE WITNESS: Yes.

16 BY MR. ISER:

17 Q. Okay. That clock that we looked at earlier,
18 the Motown clock, do you consider that to be a toy?

19 A. Personally I do not.

20 Q. And we looked at the Motown plate, the metal
21 plate. Do you consider that to be a toy?

22 A. I do not.

23 Q. We looked at a pen and a pencil -- actually
24 looked at two pens and a pencil. Do you consider
25 these to be toys, sir?

1 A. I consider those to be writing devices and
2 toys.

3 Q. Okay. Stuffed animal --

4 A. Yes.

5 Q. -- consider that to be a toy?

6 A. Yes, I do.

7 Q. And the ball within a ball, consider that to
8 be a toy?

9 A. Yes, I do.

10 MS. LEWIS: Incidentally, that lights up
11 when you bounce it as well.

12 MR. ISER: Is that right? Counsel has spent
13 some time playing with these toys.

14 Q. All right. The mood light, do you consider
15 the mood light to be a toy?

16 A. Yes, I do.

17 Q. All right. And how about the harmonica key
18 chain, do you consider that to be a toy?

19 A. Yes, I do.

20 MR. ISER: Counsel, does the harmonica work?

21 MS. LEWIS: I believe it does.

22 BY MR. ISER:

23 Q. Now, other than the products that we have
24 looked at and discussed today, can you tell me
25 whether or not Universal Music Group has licensed the

1 use of the Motown mark in connection with any other
2 toys or games that we haven't discussed today?

3 A. I don't have knowledge of that.

4 Q. Can you think of a single other toy or game
5 other than what we've discussed today?

6 A. I personally cannot but others may be able
7 to.

8 Q. Who would those others be?

9 A. Probably people in the TV and film
10 department who again deal with these licenses. And,
11 you know, regrettably a person who's no longer with
12 the company may have some knowledge.

13 Q. Now, other than the style guide that you
14 have testified to that has been created in
15 anticipation of the rollout of the 50th anniversary
16 celebration, other than the toys and products that
17 we've -- not products. Let's stick to toys. Other
18 than the toys that we have looked at today, has
19 Universal Music Group entered into any licenses thus
20 far for any additional toy products other than what
21 we have discussed today?

22 A. Unfortunately, I just don't have that
23 knowledge.

24 Q. Okay. Has there been any discussion within
25 Universal Music Group to expand its merchandise more

1 broadly with respect to toys, games, or playthings?

2 A. Specifically not to toys, games, or
3 playthings, but there has been discussion of a very
4 aggressive merchandise push that would not limit the
5 scope of the reach of the Motown brand.

6 Q. Now, are you aware, sir, that we're here
7 taking your deposition in a case where your employer
8 Universal Music Group has objected to a request by
9 Mattel, the toy manufacturer, to obtain trademark
10 registration for the mark "Motown Metal"? Are you
11 aware of that?

12 MS. LEWIS: If it -- if your awareness comes
13 from discussions with me, then I'm going to instruct
14 you not to answer.

15 BY MR. ISER:

16 Q. So -- okay. Have you ever heard of the --
17 outside of your discussions with counsel, let's put
18 it that way, are you aware of an effort by Mattel,
19 the toy company, to obtain trademark registration for
20 the mark "Motown Metal" for use on toy vehicles?

21 A. No.

22 Q. Had it ever come to your attention as
23 vice president of marketing, and, again, outside
24 discussions with counsel, that Mattel had put out a
25 line of toy cars with the trademark "Motown Metal"?

1 A. To my personal attention, no.

2 Q. Did anybody within your organization other
3 than counsel ever tell you that?

4 A. No.

5 Q. How about outside of your organization,
6 people that know that you work for Universal, did you
7 ever hear from anybody outside your organization that
8 Mattel had put out a line of -- for toy cars, for Hot
9 Wheels cars, with the mark "Motown Metal"?

10 A. No.

11 Q. Did you ever see any Motown Metal toy car in
12 any retail store?

13 A. No.

14 Q. So is it correct, sir, that the only
15 knowledge you have regarding Mattel's use of the mark
16 "Motown Metal" on a line of Hot Wheels cars is
17 information that you have from counsel that you
18 cannot discuss with me. Is that correct?

19 MS. LEWIS: If you -- if you -- if you have
20 any knowledge --

21 THE WITNESS: I have no -- no, I have no
22 other knowledge of it.

23 BY MR. ISER:

24 Q. Okay. Did anyone ever come to you within
25 the organization to tell you that there was a

1 complaint received by Universal Music Group because a
2 consumer was confused, having looked at a Hot Wheels
3 car, that perhaps the source of that car was
4 Universal Music Group?

5 A. No, but there -- there are a great amount of
6 collectors in the marketplace that search for
7 anything that has the Motown name on it and collect
8 those things, so I'm not aware of any confusion
9 specifically. But there are, it's -- it's a very
10 deep, very committed collector base of the Motown
11 brand.

12 MR. ISER: Well, I'm going to move to strike
13 everything after the word "no" as nonresponsive and
14 calling for -- and constituting speculation.

15 Q. Are you aware of -- have you or anyone
16 within your organization, to your knowledge, been
17 contacted by any collector of things Motown regarding
18 the Motown Metal series of Hot Wheels cars put out by
19 Mattel?

20 A. I can only speak for myself. I have not.

21 Q. And you have not heard from anyone within
22 your organization that they've been contacted with
23 respect to the Motown Metal line of Hot Wheels cars
24 put out by Mattel. Correct?

25 A. That's correct.

1 Q. And finally, sir, are you aware of any study
2 or focus group or any other information within your
3 organization with respect to any confusion in the
4 marketplace caused by Mattel's line of Hot Wheels toy
5 cars bearing the mark "Motown Metal"?

6 A. I'm personally not aware of any.

7 Q. Sir, have you ever heard of a toy known as
8 the Motown Missile?

9 A. No.

10 Q. Does Motown -- strike that.

11 Does Universal Music Group have a policy
12 with respect to the use by any person or entity
13 outside of Universal Music Group with -- of the word
14 "Motown"?

15 A. I can't speak on a business affairs level,
16 but I know that we're very serious when it comes to
17 how we want our mark to appear and who we want to --
18 how we enter into agreements. I don't execute those
19 agreements.

20 Q. Is it the policy of Universal Music Group to
21 send a cease and desist letter to any third party
22 that might use the word "Motown" in connection with
23 any product or service?

24 MS. LEWIS: Objection. This witness is not
25 here to testify regarding enforcement efforts.

1 BY MR. ISER:

2 Q. You can respond.

3 A. I don't know.

4 MR. ISER: Okay. Why don't we take a little
5 break.

6 (Recess taken.)

7 BY MR. ISER:

8 Q. We talked, sir, about the various products
9 that were obtained at the Motown store in Detroit
10 airport. Beyond that store, are those products sold
11 at retail elsewhere?

12 A. Not to my knowledge. Although may I -- I
13 don't know what -- some of those products may also be
14 sold at the Hitsville museum store. I'm not certain
15 whether they are or are not.

16 Q. All right. So you believe that, other than
17 the Motown store at the Detroit airport and perhaps
18 the Hitsville museum store also located in Detroit,
19 those products that we've discussed are not sold
20 beyond there?

21 A. To the best of my knowledge, no.

22 Q. Okay. That would include the clock that we
23 looked at. Correct?

24 A. If the clock -- actually, I'm not a
25 hundred percent certain where the clock came from.

1 If it did come from the museum store, then that would
2 be my -- yeah, I would agree.

3 Q. The toothbrush, and we haven't yet found the
4 "ABC" toothbrush, the -- the toothbrush, what's that
5 called Tunes --

6 A. Tooth Tunes.

7 Q. Tooth Tunes. All right. Where are those
8 sold?

9 A. I believe they're sold at supermarkets and
10 Target and places like that. Wal-Mart.

11 Q. Okay.

12 MS. LEWIS: Also, I'm sorry to interrupt, I
13 just want to clarify something. I'll represent to
14 you that the clock actually did not come from the
15 Detroit airport store.

16 MR. ISER: Okay.

17 MS. CHO: This came from the store. This
18 stuff did not (indicating).

19 MR. ISER: Okay. Can I have the box back?
20 Let's just put this on the record.

21 Q. Okay. I'm holding the box in front of me
22 and I'm just going to rattle off the products. And
23 if you'll just -- again, sir, because it's a depo we
24 have to have questions and answers. These are the
25 products which counsel have indicated all came from

1 the Motown store and if you'll just confirm the
2 products as I hold them up.

3 It's the metal plate which was in our office
4 but I understand the -- originally came from the
5 Motown store in the airport.

6 A. Yes.

7 Q. Okay. And we have the microphone pen also
8 from the Motown store?

9 A. Yes.

10 Q. We have the pink stuffed bear?

11 A. Yes.

12 Q. We have the -- the ball within the ball,
13 "Motown Music, Detroit"?

14 A. Yes.

15 Q. We have the mood light?

16 A. Yes.

17 Q. We have the large pink pen that says "Motown
18 Music Review"?

19 A. Yes.

20 Q. We have the pencil which at the top is
21 shaped like a guitar?

22 A. Yes.

23 Q. And we have the key chain with the
24 harmonica.

25 A. Yes.

1 Q. Okay. With respect to the children's CD
2 that is coming out right now, where will those be
3 sold?

4 A. They will be sold at music retailers as well
5 as certain children's boutiques in the United States.

6 Q. Okay. And you believe --

7 A. I'm sorry. And online.

8 Q. Online like at iTunes, for example?

9 A. And Amazon.

10 Q. And with respect to Tooth Tunes, I think
11 you've indicated general sales throughout the mass
12 market?

13 MS. LEWIS: Objection. Asked and answered.

14 MR. ISER: Okay. We're just trying to get
15 it done.

16 Q. Go ahead.

17 A. Yes.

18 Q. And what about the clock? Do you have any
19 knowledge that that's for sale or not at this time?

20 A. I have no personal knowledge of that.

21 Q. These products that are in the box that we
22 just went through, do you know if all of these
23 products are currently for sale at the Motown store
24 in the Detroit airport?

25 A. I believe they are.

1 Q. Okay. Can you identify any retail
2 establishment where that clock, the Motown clock, is
3 being sold?

4 A. I cannot.

5 Q. What about the karaoke machine? I think you
6 indicated you don't know if it's still for sale.
7 Correct?

8 A. I don't know if it's still for sale and I
9 don't know where it was sold when it was sold.

10 MR. ISER: Okay. All right. Well, you'll
11 be happy to hear I have no further questions. I
12 thank you for coming in.

13 Now, that being said, we still need,
14 Counsel, to have a witness designated with respect to
15 topic 1 regarding license agreements and sales of
16 product. In other words, you've provided us the
17 various licenses and information regarding royalties
18 and sales and so we need someone to talk about that.

19 MS. LEWIS: Understood.

20 MR. ISER: We also need someone designated
21 on topic 5. And I think that's it. Topic 8 you're
22 just objecting and you're not going to have anyone
23 testify on topic 8?

24 MS. LEWIS: As you did.

25 MR. ISER: Okay. With that, anything else,

1 Chad?

2 MR. FITZGERALD: No.

3 MR. ISER: Okay. Other than that, that's
4 fine. Should we put a stipulation on the record?

5 MS. LEWIS: Go right ahead.

6 MR. ISER: Are we facing any kind of time
7 situations here or is 30 days --

8 MR. FITZGERALD: We've recently just
9 expanded our dates again and they --

10 MS. LEWIS: To the end of September.

11 MR. FITZGERALD: Right. And the --

12 THE REPORTER: Do you want this on the
13 written record or --

14 MR. ISER: No, no. Let's go off the record
15 and put a stip on in a minute.

16 (Discussion held off the record.)

17 MR. ISER: So let's go back on the record.

18 We're going to offer the following
19 stipulation: The original transcript will be sent to
20 counsel who will transmit it to the deponent. The
21 deponent will have 20 days from receipt by counsel of
22 the original transcript to read and review the
23 transcript and make any changes he wishes to make to
24 his testimony and then sign the deposition transcript
25 as being true under penalty of perjury.

1 The original can stay with counsel but
2 counsel will notify me of the fact the original has
3 been signed and will provide me with photocopies of
4 any page on which there has been a change in the
5 testimony as well as the executed signature page.

6 And if that doesn't happen, then a
7 transcript can be used for all purposes in this legal
8 proceeding and any other legal proceeding as if it
9 were a signed original.

10 And we relieve the court reporter of her
11 duty with respect to maintenance and custody of the
12 original deposition transcript.

13 MS. LEWIS: Agreed.

14 THE REPORTER: Are you ordering a copy?

15 MS. LEWIS: Let me think about it.

16 THE REPORTER: I'll say no until I hear from
17 you.

18 MS. LEWIS: Thank you.

19 (Whereupon, at 12:23 P.M., the
20 deposition of JEFF MOSKOW was
21 adjourned.)

22
23
24
25

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3
4

5 I, JEFF MOSKOW, hereby certify under penalty
6 of perjury under the laws of the State of California
7 that the foregoing is true and correct.

8 Executed this _____ day of
9 _____, 2008, at
10 _____, California.
11
12

13 _____
14 JEFF MOSKOW
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

3 I, SUSAN NELSON, C.S.R. 3202, in and for the
4 State of California, do hereby certify:

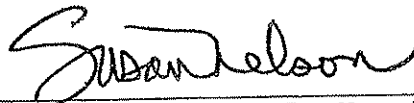
5 That, prior to being examined, the witness named
6 in the foregoing deposition was by me duly sworn to
7 testify the truth, the whole truth and nothing but
8 the truth;

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named, and
11 thereafter reduced to typewriting under my direction,
12 and the same is a true, correct and complete
13 transcript of said proceedings;

14 Before completion of the deposition, review of
15 the transcript [X] was [] was not requested. If
16 requested, any changes made by the deponent (and
17 provided to the reporter) during the period allowed
18 are appended hereto.

19 I further certify that I am not interested in
20 the event of the action.

21 Witness my hand this 18th day of September,
22 2008.

23 

24 Susan Nelson, C.S.R. No. 3202
25 Certified Shorthand Reporter
State of California

Deposition Exhibit 100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant

AMENDED NOTICE OF DEPOSITION OF OPPOSER UMG RECORDINGS, INC.

(FED. R. CIV. P. 30(b)(6) and TBMP § 404.03(a)(1))

DATE: July 21, 2008

TIME: 10:00 a.m.

PLACE: Kinsella Weitzman Iser Kump & Aldisert LLP

808 Wilshire Boulevard, 3rd Floor

Santa Monica, California 90401

55040.00084/39056.1

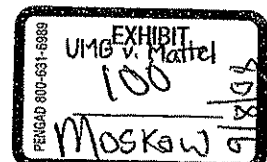


Exhibit: A
Page: 85

TO OPPOSER UMG RECORDINGS, INC. AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on July 21, 2008 at 10:00 a.m., Applicant Mattel, Inc. ("Applicant") will take the deposition of Opposer UMG Recordings, Inc. ("UMG") at the offices of Kinsella Weitzman Iser Kump & Aldisert LLP, 808 Wilshire Boulevard, 3rd Floor, Santa Monica, California 90401, pursuant to Fed. R. Civ. Proc. 30(b)(6) and TBMP § 404.03(a)(1). The deposition will be taken before a certified court reporter, and will continue from day-to-day (weekends and holidays excluded) until completed, unless the parties agree otherwise. Applicant intends to record the testimony by audio and video technology, in addition to recording the testimony by stenographic means through the instant display of the testimony, including by means of "Livenote" or other comparable software.

YOU ARE FURTHER NOTIFIED THAT:

Deponent UMG, a corporate entity, is hereby requested, pursuant to Fed. R. Civ. Proc. 30(b)(6), to designate and produce the person(s) to testify who is or are most knowledgeable about the following matters:

1. UMG's use of the mark MOTOWN in commerce, including but not limited to UMG's use of the mark MOTOWN in connection with toys, games, and/or playthings.
2. UMG's selection and/or adoption of the mark MOTOWN for use in connection with toys, games, and/or playthings.
3. UMG's plans to date for entry or expansion into the market for toys, games, and/or playthings.
4. Consumer confusion between the mark MOTOWN and the mark MOTOWN METAL.

5. Claims, demands, or complaints UMG has made or brought against third parties, including but not limited to Applicant, on the grounds that such third party's acts or conduct impinge or impinged on UMG's rights in the mark MOTOWN.
6. Why the mark MOTOWN was originally chosen for the Motown record label.
7. What UMG understands the term "Motown" to mean, represent, and/or connote.
8. UMG's Notice of Opposition and Amended Notice of Opposition filed against Applicant in this proceeding.
9. UMG's alleged common law rights in the mark MOTOWN.

DATED: June 27, 2008

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: 

Chad R. Fitzgerald
Attorneys for Applicant Mattel, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, California 90401.

On June 27, 2008, I served the following document(s) described as **AMENDED NOTICE OF DEPOSITION OF OPPOSER UMG RECORDINGS, INC.** on the interested party in this action as follows:

Alexa L. Lewis, Esq.
Mitchell Silberberg & Knupp LLP
11377 West Olympic Blvd
Los Angeles, CA 90064
Email: all@msk.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump & Aldisert's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

AND

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a courtesy copy of the document(s) to be sent from e-mail address choffman@kwikalaw.com to the persons at the e-mail addresses listed above or on the attached Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 27, 2008, at Santa Monica, California.

Candace E. Hoffman

Deposition Exhibit 101

Filed Under Seal Pursuant to Protection Order

Deposition Exhibit 102

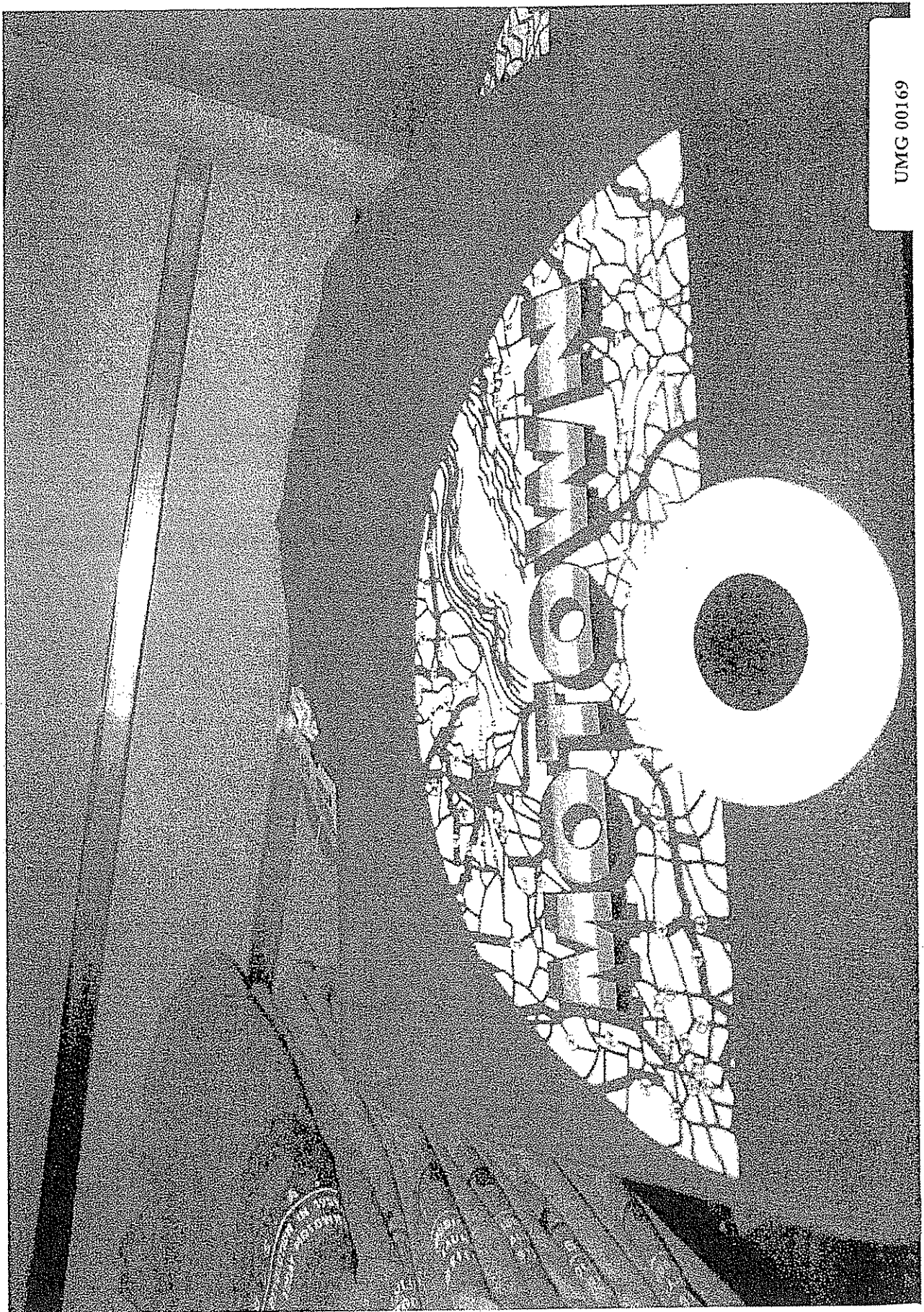


UMG 00167

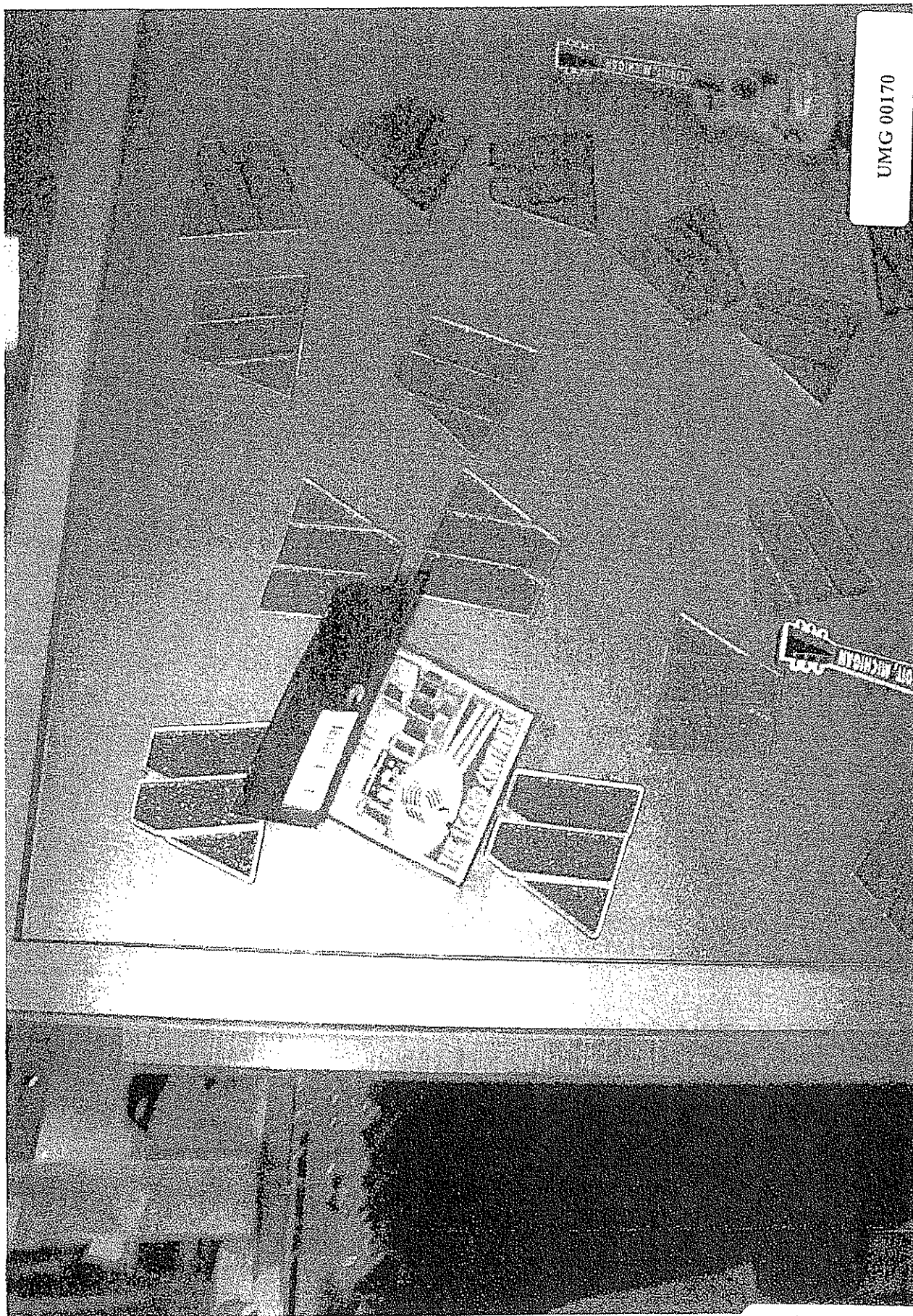
EXHIBIT
UMG V. MOTOW
102
Moskow
PENGAD 800-631-6999



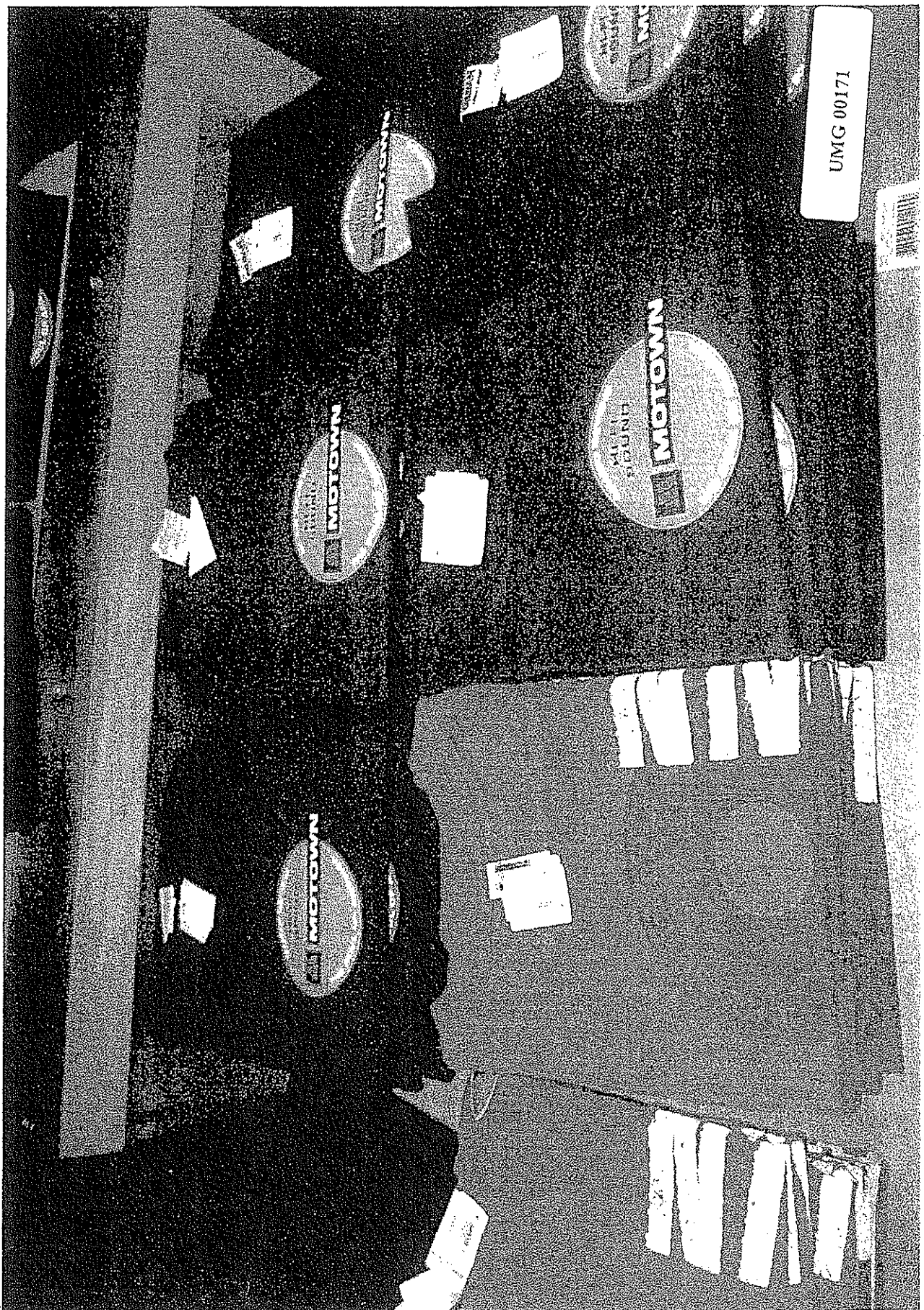
UMG 00168

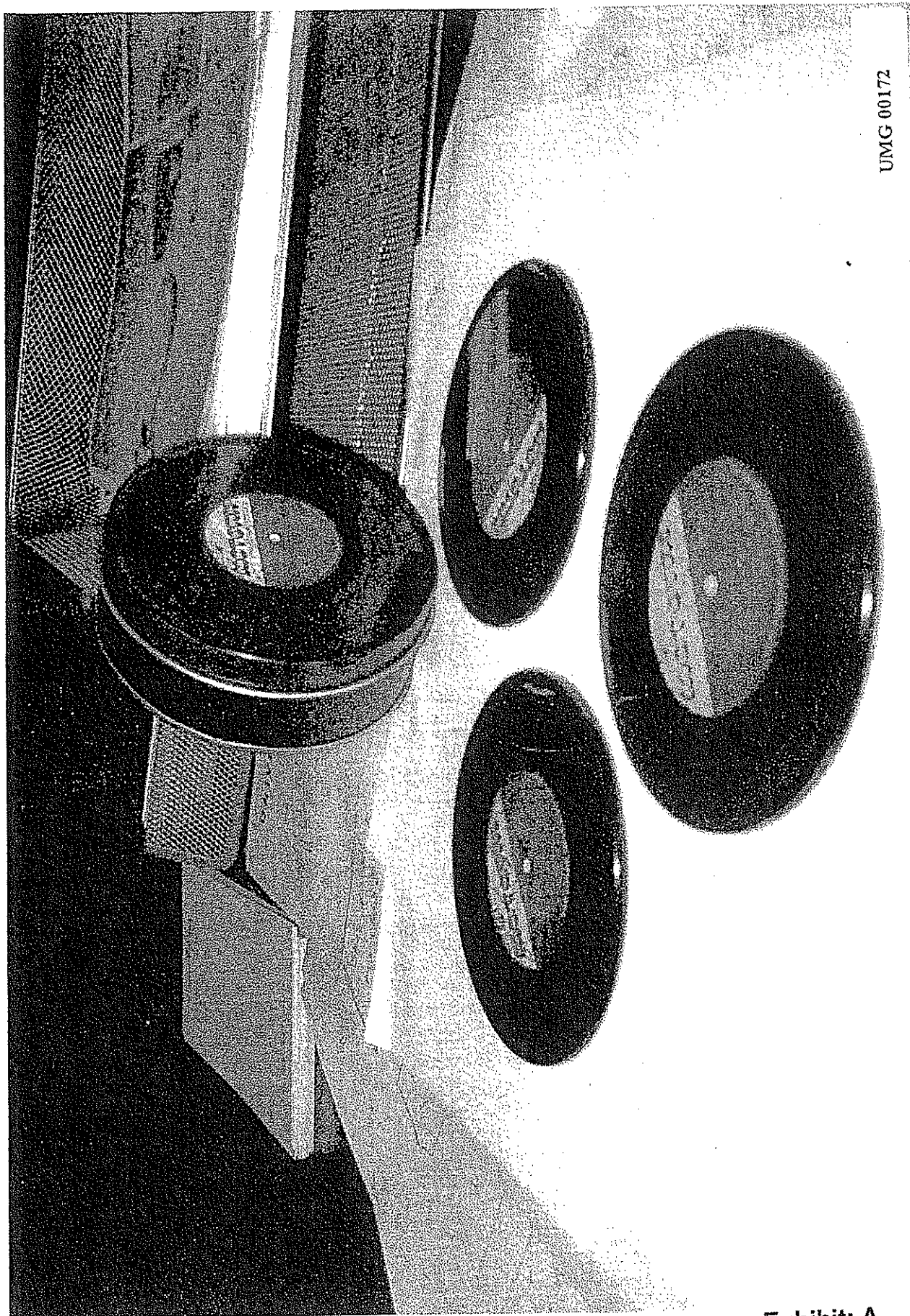


UMG-00169



UMG 00170





UMG 00172